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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re A.M. et al., Persons Coming Under
the Juvenile Court Law.

SAN BERNARDINO COUNTY
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

D.M.,

Defendant and Appellant.

E072059

(Super.Ct.Nos. J277784, J277785,
J277786 & J277787)

OPINION

APPEAL from the Superior Court of San Bernardino County. Erin K. Alexander,
Judge. Affirmed.

Emily Uhre, under appointment by the Court of Appeal, for Defendant and
Appellant.

Michelle D. Blakemore, County Counsel, Dawn M. Martin, Deputy County
Counsel, for Plaintiff and Respondent.

Defendant and appellant D.M. (father) appeals from dispositional orders made in juvenile dependency proceedings involving his two children and their two maternal half siblings (the children). He argues the juvenile court abused its discretion when it ordered him to participate in a substance abuse program.

We will affirm.

BACKGROUND

The children were taken into protective custody by San Bernardino County Children and Family Services (CFS) after a domestic violence incident involving father, the mother, and the eldest child, an 11-year-old who was injured in the course of the altercation. CFS filed Welfare & Institutions Code section 300¹ juvenile dependency petitions as to each of the four children.

Prior to the hearings on jurisdiction and disposition, CFS, father, and the mother engaged in mediation efforts. As to jurisdiction, they agreed to amendments to the petitions as follows: all the children came within subdivision (b)(1) of section 300 due to the risk to them of serious physical harm posed by their mother's abuse of prescription medication and because both parents had engaged in domestic violence in their presence; the eldest child came within subdivision (a) because he had been involved in a domestic violence incident; the three younger children came within subdivision (j) because of that incident; and the two oldest children came within subdivision (g) because the whereabouts of their biological father were unknown. With respect to family

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

reunification services, father agreed to participate in individual counseling, random drug testing, a domestic violence program, and parenting classes.

The court sustained the petitions in their amended form. At the hearing on disposition, it found father is a presumed parent of the children, adjudged the children dependents of the court, and removed them from parental custody. It modified some aspects of the reunification services agreed upon by the parties, including the addition of the requirement that father participate in outpatient substance abuse treatment because his recent drug tests were positive for marijuana. The court also ordered both parents to drug test that day.

Father appealed.

DISCUSSION

On appeal, father argues that the juvenile court erred when it ordered a substance abuse program as part of his family reunification plan. He claims imposition of that requirement was not a reasonable exercise of the court's discretion because his marijuana use was not a basis for assertion of dependency jurisdiction and because his participation in a drug program was not included in the mediated family reunification services agreement. We are not persuaded.

Section 362 confers broad discretion to determine what will serve a child's best interest and to fashion orders on disposition accordingly. It provides in pertinent part that, once a child is adjudged a dependent of the court pursuant to section 300, the court "may make any and all reasonable orders for the care, supervision, custody, conduct,

maintenance, and support of the child, . . .” (§ 362, subd. (a).) The orders must be designed to eliminate the conditions that led to the court’s finding that the child comes under section 300. (§ 362, subd. (d).)

We will not disturb the juvenile court’s dispositional orders absent a clear abuse of discretion. (*In re Briana V.* (2015) 236 Cal.App.4th 297, 311 (*Briana V.*).) The question is whether, upon reviewing all the evidence in a light most favorable to the juvenile court’s ruling, a rational factfinder could conclude that the order was designed to advance the best interest of the child. (*In re Natalie A.* (2015) 243 Cal.App.4th 178, 186-187.)

In this case, we do not find the order requiring father to participate in an outpatient treatment program to be a clear abuse of the juvenile court’s discretion. It was reasonable to infer that father has a substance abuse issue. He admitted he had been using marijuana on and off for 20 years. He was currently using marijuana, which he did not describe as “occasional” as posited in his brief. Between his first on-demand drug screen in September 2018 and the hearing on disposition in January 2019, father had been tested four times, and all results came back positive for marijuana.² Father reported he was arrested in Montana for possession of a dangerous drug (hydrocodone) in 2010.

² Father attached to his notice of appeal a copy of the result of his drug test ordered on the day of the dispositional hearing result, which was negative for all substances, including marijuana. While we applaud that result, it was not evidence before the juvenile court when making its decision and we need not consider it when making ours. (*In re Josiah Z.* (2005) 36 Cal.4th 664, 676 [an appellate court should not consider postjudgment evidence bearing on the merits of an appeal that is introduced for the purpose of attacking the trial court’s judgment].)

Moreover, although father denied having access to the mother's drugs, there is evidence they were available in the home.

In addition, the social worker's interviews of the children old enough to be questioned revealed that they were likely exposed to father's marijuana use. When asked if he knew what drugs and alcohol were, the eight-year-old child said his parents "smoke." The nine-year-old said father has a permission slip allowing him to smoke. The 11-year-old reported father has medicine "he can't get arrested for," and he uses it to "keep him from freaking out." It is reasonable to infer from the children's responses that father's use of marijuana was ongoing and in the presence of the children. It is also reasonable to infer that his marijuana use contributed to his lack of protective capacities and his minimization of issues adversely affecting the children, including the unresolved relationship problems and domestic violence in the home.

In view of the indicia of marijuana abuse and the impact on the children, and in the light of the Legislature's declaration in section 300.2 that the well-being of minors necessarily requires a home environment free from the negative effects of substance abuse, we conclude the order was designed to advance the children's best interests.

Father argues he should not be required to participate in a program to address substance abuse because the dependency petitions alleged only that he engaged in domestic violence with the mother. We disagree. When fashioning a disposition order in the best interest of the child, the court is not limited to the content of the sustained petition. (*Briana V.*, *supra*, 236 Cal.App.4th at p. 311.)

We also disagree with father’s contention that, because CFS was aware of his marijuana use and nevertheless did not recommend a substance abuse program, the juvenile court abused its discretion and was “operating at a relative low point of its authority” by disregarding the social worker’s case plan. It is true, as father posits, that a juvenile court may rely on a child service agency’s institutional knowledge and the social workers’ individual experience when ordering family reunification services. (*In re D.C.* (2015) 243 Cal.App.4th 41, 57.) It is not true, however, that the court is constrained by the recommendations of the agency or its social workers. It has broad authority to order reasonable services designed to address the conditions leading to assertion of dependency jurisdiction. (§ 362, subd (d).) It properly exercised that authority in this case.

DISPOSITION

The judgment is affirmed.

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RAMIREZ
P. J.

We concur:

McKINSTER
J.

FIELDS
J.